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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,087	01/29/2004	Harald Michi	10191/3439	4599
26646	7590	11/22/2005	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			MANCHO, RONNIE M	
			ART UNIT	PAPER NUMBER
			3663	

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/767,087

Applicant(s)

MICHIE ET AL

Examiner

Ronnie Mancho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Status

1. This is a first action in response to the application submitted 1-29-04

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-14 are provisionally rejected under the judicially created doctrine of double patenting over:

claims 8-14 of copending application US 10496434; and

claims 11-20 of copending application US 10507276

This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a speed control otherwise known as a cruise control.

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Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

4. Claims 1-14 are rejected under the judicially created doctrine of double patenting over: claims 1-14 of U. S. Patents No. 6820709; and claims 1-7 of U. S. Patents No. 6853903, since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a speed control otherwise known as a cruise control.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-14 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 1, the limitation “the input device having a plurality of operating modes differing in functional scope which can be activated in different speed ranges, a change in a current operating mode which results in the loss of a safety-relevant function occurring solely via a command of the driver” is indefinite.

That is the applicant needs to specify what “which” in the claimed “which can be activated in different speed ranges” refers to. Does it qualify the claimed “input device” or the claimed “operating modes”.

The claimed “a change in a current operating mode which results in the loss of a safety-relevant function occurring solely via a command of the driver” seems to be a phrase just attached to the other limitations without any connection to the limitations.

The phrase “a safety-relevant function” is undefined. What one person considers safe and relevant could be a disaster and non-relevant to another.

The resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

In claim 4, the applicant claims “a second of the plurality of operating modes is for lower vehicle speeds, the second operating mode being activatable in a speed range having an upper limit at least equal to the limiting speed”. This limitation is confusing because the second speed is lower than the claimed “limiting speed” and it is in “a speed range having an upper limit *at least* equal to the limiting speed”. It is not clear if the applicant intends to claim --at most-- instead of “at least”. The claimed “at least” would mean that the second operating speed must be above the “limiting speed”, and this will contradict the first operating mode.

Claims 2-14 are rejected for depending on a rejected base claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Hirasago (6658344).

Regarding claim 1, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses a speed controller for a motor vehicle comprising:

an input device to receive input of a desired speed by a driver (see inputs as in figs. 1-31), the input device having a plurality of operating modes (figs. 6 A-C; fig. 31) differing in functional scope which can be activated in different speed ranges, a change in a current operating mode which results in the loss of a safety-relevant function occurring solely via a command of the driver (cols. 2&3); and

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a decision unit to determine), using predefined criteria, whether a change in the desired speed input by the driver is to be interpreted as a command for changing the current operating mode (controller; cols. 2, 4-7).

Regarding claim 2, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 1, further comprising a display device adapted to display the current operating mode.

Regarding claim 3, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 1, further comprising a signal device to signal to the driver a change in the current operating mode.

Regarding claim 4, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 1, wherein a first of the plurality of operating modes is an operating mode for higher vehicle speeds that is activatable only above a limiting speed, and a second of the plurality of operating modes is for lower vehicle speeds, the second operating mode being activatable in a speed range having an upper limit at least equal to the limiting speed and providing in certain instances an automatic braking of the vehicle to a standstill.

Regarding claim 5, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 4, wherein the decision unit automatically causes a change from the first operating mode into the second operating mode when the speed of the vehicle decreases to below the limiting speed and then automatically limits the desired speed to a value permitted in the second operating mode.

Regarding claim 6, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 5, wherein the decision unit automatically causes a change from the first

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operating mode into the second operating mode when the desired speed is lower than the limiting speed V_s and when the actual speed of the vehicle is less than V_s+h_1 , where h_1 has a non-negative value.

Regarding claim 7, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 5, wherein the decision unit automatically causes the change from the first operating mode into the second operating mode when one of the following occur:

a) the desired speed is increased to a threshold value which is at least equal to the limiting speed; and

b) the actual speed of the vehicle does not increase to the limiting speed within a predefined time interval.

Regarding claim 8, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 4, wherein the decision unit automatically causes the change from the second operating mode into the first operating mode when the desired speed is increased by the driver to a value that is greater than V_s+h_1 , V_s being the limiting speed and h_1 having a non-negative value.

Regarding claim 9, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 4, wherein the decision unit deactivates the speed controller when, in the second operating mode, the desired speed is less than or equal to the limiting speed V_s and the actual speed is greater than a threshold value V_s+h_2 , where h_2 has a non-negative value.

Regarding claim 10, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 5, wherein the decision unit deactivates the speed controller when, in the second operating mode for lower speeds, the speed of the vehicle increases, and the driver does

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not input a new desired speed, while the actual speed of the vehicle lies within a predefined speed range.

Regarding claim 11, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 4, wherein the decision unit activates the speed controller in the first operating mode when, upon the input of the desired speed, the actual speed of the vehicle is greater than the limiting speed and the decision unit activates the speed controller in the second operating mode and limits the desired speed when, upon the input of the desired speed, the actual speed of the vehicle is less than or equal to the limiting speed.

Regarding claim 12, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 11, wherein the decision unit activates the speed controller in the second operating mode only when a target object is located by a distance sensor system and the distance from the vehicle to this target object lies within a predefined range.

Regarding claim 13, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 12, wherein the decision unit automatically deactivates the speed controller in the second operating mode when the target object is not detected lost and is not re-detected within a predefined time span.

Regarding claim 14, Hirasago (abstract, cols. 2, 4-7; figs. 1-31) discloses the speed controller of claim 12, wherein the decision unit automatically deactivates the speed controller in the second operating mode when the distance between the vehicle and the target object becomes greater than a predefined value.

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Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronnie Mancho whose telephone number is 571/272/6984. The examiner can normally be reached on Mon-Thurs; 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571/272/6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ronnie Mancho
Examiner
Art Unit 3663

11/14/05


JACK KEITH
SUPERVISORY PATENT EXAMINER